Supreme Court, U.S.
FILED
MAR 25 2008
OFFICE OF THE CLERK

109 (D)

No. 08-549

IN THE

SUPREME COURT OF THE UNITED STATES

MARIA TERESA GRANADOS OLVERA

Petitioner

v.

MICHAEL B. MUKASEY
ATTORNEY GENERAL

Respondent

On Petition or a Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

USCA No. 06-71597
Agency No. A95-306-370

Maria Teresa Granados Olvera
In Pro Per
120 S. Sunkist Apt. D
Anaheim California 92805

QUESTIONS PRESENTED

A. DID THE IMMIGRATION JUDGE DENY THE PETITIONER A FULL AND FAIR HEARING BY DENYING HER A CONTINUANCE TO OBTAIN EVIDENCE TO PROVE HER SON'S SPECIAL NEEDS?

LIST OF PARTIES

The party in this case is the United States Immigration and Naturalization Service.

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OPINIONS BELOW

{X} For cases from Federal Courts

The opinion of the United States Court of Appeal appears at Appendix A to the petition and is

{X} is unpublished.

JURISDICTION

{X} For cases from Federal Court

{X} A timely petition for rehearing was denied by the United States Court of Appeal on the following date; December 28, 2007, and a copy of the order denying a rehearing appears at Appendix A.

The jurisdiction of this court is invoked under 28 U.S. C. Section 1254 (1)

CONSTITUTIONAL AND STATUATORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

Petitioner is a thirty-four year old female, who is a native and citizen of Mexico. She was born on May 19, 1974. She entered the United States on or about September 23, 1991, and has never left this country. She became subject to removal by the Immigration and Naturalization Service under Section 212 (a)(6)(I) of the Immigration and Nationality Act. In an immigration hearing held on December 16, 2004, Petitioner requested relief from removal in the form of Cancellation of Removal, Section 240A (b) of the Act. Her qualifying relative was her son, Jose Antonio Gonzales, who is now thirteen years of age.

The Immigration Judge denied the Petitioner's one and only request for a continuance to obtain school records for her son to demonstrate his special needs in school. The Immigration Judge then denied Petitioner's application for cancellation or removal, stating that she could not demonstrate "exceptional and extremely unusual hardship."

On December 30, 2004, Petitioner filed a timely Notice of Appeal with the Board of Immigration Appeals. On February 27, 2006, the BIA denied Petitioner's appeal.

On March 29, 2006, the Petitioner filed a timely Petition For Review and Motion To Stay Removal with the Ninth Circuit Court of Appeals. The Office of Immigration Litigation did not oppose the Motion for Stay.

On December 28, 2007, the Ninth Circuit Court of Appeal denied the Petitioner's Petition For Review. On March 15, 2008, the Petitioner filed a Motion For Stay of Removal with the Ninth Circuit Court of Appeals, pending

the filing of a Writ of Certiorari with the Supreme Court of the United States

The Petitioner now files his Petition for a Writ of Certiorari with the Supreme Court of the United States.

A. THE NINTH CIRCUIT COURT OF APPEAL'S FAILURE TO GRANT PETITIONER'S PETITION FOR REVIEW IS A DENIAL OF DUE PROCESS

Petitioner, who was brought under removal proceedings by the INS, appealed the decision of the Immigration Judge, denying her cancellation of removal, as a form of relief. The Board of Immigration Appeals adopted and affirmed the decision of the Immigration Judge and dismissed the appeal of the Petitioner on February 27, 2006.

The Petitioner then filed an appeal to the Ninth Circuit Court of Appeal, through her Petition for Review of an Order of the Board of Immigration Appeals on march 29, 2006. This Petition was denied by the Ninth Circuit on December 28, 2007.

The Appellant contends that the Immigration Judge violated her due process in that he failed to continue the hearing on her Petition For Cancellation of Removal so that she could obtain evidence of the special circumstances giving rise to exceptional and extreme

hardship to her American citizen son. Appellant contends that this denial of a continuance amounts to a violation of her constitutional rights and a denial of due process under the Fourteenth Amendment of the Constitution.

The Petitioner, as herein stated, has one American citizen child, and she is a single mother. She is employed at a fast food restaurant, Taco Bell, and is the sole support of herself and her son. The Petitioner has no family living in Mexico, and no one to help her establish domicile, including housing, and employment, for herself, and her son, if she were removed to Mexico.

At the Petitioner's merits hearing, the Petitioner attempted to demonstrate hardship to her United States citizen son. She testified to his special needs that require additional after school assistance. Prior to the merits hearing, the Petitioner attempted to obtain additional documentary evidence supporting her child's need, but the school was not in session.

At her merits hearing, the Petitioner testified that her son is required to attend two after school programs, five days per week, in which he receives special help with his schoolwork. The programs specifically assist with slow learners in the areas of reading and writing, and require five days of continuous attendance, throughout the school year.

After laying her foundation for the special needs of her son, the Petitioner requested a continuance to provide documentation from her son's school, prior to the Court issuing its final decision. The Immigration Judge denied her request for continuance. In the Immigration Judge's final decision, the Immigration

Judge denied the Petitioner's application for Cancellation of Removal. On appeal, the BIA upheld the decision of the Immigration Judge, finding that there was no "good cause" for continuance.

A. THE BOARD OF IMMIGRATION JUDGE DENIED THE PETITIONER A FULL AND FAIR HEARING ON ALL ISSUES AFFECTING HER APPLICATION FOR CANCELLATION OF REMOVAL

Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control. The Chinese Exclusion Case, 130 U.S. 581 (1889), Fong Yue Ting v. United States, 149 U.S. 698, (1893), Knauff v. Shaughnessy, 338 U.S. 537 (1950).

However it is also clear that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to the traditional standards of fairness encompassed in due process of law. The Japanese Immigrant Case, 189 U.S. 186 (1903); Woo Yan Sung v. McGrath, 339 U.S. 33, (1950), Kwong Hai Chew v. Colding 344 U.S. 590, 598, (1953),

In Wong Yang Sung v. McGrath, 339 U.S. 33, (1950), it is stated that "Our law may, and does place more restrictions on the alien then the citizen. But basic fairness in hearing procedure does not vary with the status of the accused. If the procedures used to judge the alien

are fair and just, no good reason can be give why they should not be extended to simplify the condemnation of the citizens. If they would be unfair to citizens, we cannot defend fairness of them when applied to the more helpless alien. This is at the root of our holdings that the alien must be given a fair hearing to test an official claim that he is one of a deportable class."

The court in Shaughnessy v. Mezei, 345 U.S. 206 (1953) further elaborated as follows, "The most scrupulous observance of due process, including the right to know a charge, to be confronted with the accuser, to cross-examine witnesses, and to produce evidence in one's own behalf, is especially necessary. The court stated both the old proceedings by which one may be bound to keep the peace, and the newer systems are safeguarded with full rights to judicial hearings for the accused. On the contrary, the Nazi regime in Germany installed a system of "protective custody" by which the arrested could claim no judicial or other hearing process. As a result the country was filled with concentration camps and summary detentions and deportations. Such practices once established with the best of intentions, will drift into the oppression of the disadvantaged in this country as surely as it has elsewhere. Differences in the process of administration make all the difference between a reign of terror and one of law."

It is well-settled that the Fifth Amendment entitles an alien to due process of law in a removal proceedings. Reno v. Flores, 507 U.S. 292, 306, 123 L.Ed.2d, 1, 113 S. CT. (1993); also Felzcerek v. INS, 75 F. 3d 112, 115 (2nd Cir. 1996).

In the present case the Petitioner otherwise qualified for Cancellation of Removal in that she had been physically present in the United States for not less than ten

years, had not been convicted of any offense enumerated in Section 212(a)(2), was a person of good moral character, and established that removal would result in exceptional and unusual hardship to her child, who is a citizen of the United States.

The case of Gonzalez-Recinas, 23 I&N Dec. 467, 469 & 472 (BIA 2002), established a strong precedent for not removing a single mother who had no family in her native country of Mexico. In the Matter of Monreal, 23 I &N Dec. 56, 63 (BIA 2001), the court further reasoned that a qualifying relative with special needs in school may have a strong case against removal of the respondent.

Accordingly, at the merits hearing, Petitioner properly laid the foundation of "special needs in school," for her United States citizen son, and the necessity of obtaining certain documents from the school to document those special needs. Petitioner's counsel attempted to obtain a continuance to obtain the documentation for the record that would demonstrate the special needs, but was not permitted that continuance.

The law is well stated that a party seeking a continuance has the burden to establish good cause for the continuance. 8 C.F.R. Section 1003.29. Herein the petitioner was required to prove the very difficult standard of "extreme and exceptional hardship." One of the very limited number of "hardships" an applicant can demonstrate is compelling special needs in school. Matter of Monreal, 23 I&N Dec. 56, 63 (BIA 2001) Since the Petitioner was denied the opportunity to obtain the necessary records, the proceeding was incomplete.

B. THE IMMIGRATION JUDGE'S DENIAL OF ONE REQUESTED CONTINUANCE VIOLATED THE PETITIONER'S RIGHT OF DUE PROCESS

In order to provide sufficient evidence to satisfy the hardship standard for cancellation of removal cases, one of the very limited number of "hardships" an applicant can demonstrate is compelling special needs in school. Matter of Monreal, 23 I&N Dec. 56, 63 (BIA 2001). The immigration Judge failed to grant the request and instead utilized irrelevant records that were prepared in the third grade, dated May 28, 2004, prior to the Petitioner's son being diagnosed with special needs and being placed in a special after school program. The Immigration Judge then used the old and irrelevant school records to make his decision, thereby contradicting the testimony of the Petitioner, and ignoring her request to bring the appropriate records to the court.

The Immigration Judge should not merely have relied on the testimony of the Petitioner, or on the outdated school records, that did not reflect the current special needs of her child. The Immigration Judge should have required that the Petitioner return and provide the current school records to demonstrate the extent of the special needs. Denial of her request for a continuance deprived the Petitioner of an opportunity to have her case fully heard on the merits in accordance with the requirements of Constitutional due process.

When requesting a motion to continue in order to obtain additional evidence, an alien must make a reasonable showing that a diligent good faith effort to proceed was given and any additional evidence she seeks to present is probative, non-cumulative, and significantly favorable to the alien. Matter of Sibrum, 18 I&N Dec. 354, 356-57 (BIA 1983).

Petitioner's American citizen son's special needs was diagnosed as a recent problem that was not accessed and treated until the fourth grade, within six months of the merits hearing. Prior to the merits hearing, the Petitioner's son's school was not in session, preventing the Petitioner from obtaining access to the school records to submit to the court. The Petitioner's request was her first and only request for a continuance in her immigration matter.

Pursuant to the legal analysis of hardship, the school records were needed to demonstrate special needs which would have been a critical and crucial component to proper consideration of a cancellation of removal case.

Therefore the school records were probative, because they addressed the significant issue of hardship, the special needs in school. The records are non-cumulative because no similar documentary evidence had been submitted, and the Petitioner could not fully articulate the extent of the special needs of her child. Most importantly, the records would have been significantly favorable to the demonstration of hardship to the Petitioner's child.

The Petitioner was prejudiced by the Immigration Judge's denial of her request for a continuance, and this

prejudice occurred because her due process rights were violated.

In accessing the prejudice to the Petitioner, the Court is not required to determine with certainty whether the outcome would have been different, but rather whether the harm "potentially affected" the outcome of the proceeding that is accorded due process. Ciru v. Gonzalez, 450 F.3d990, 995 FN3 (9th Cir. 2006), Ramirez-Alejandre v. Ashcroft, 320 F.3d 858, 875(9th Cir. 2003). Herein the school records that the Petitioner wanted to obtain and bring to Court had the potential to affect the BIA's determination of the standard of hardship. Clearly the Immigration Judge failed to consider the necessary current evidence, but instead relied on outdated school records that were over six months old, and did not address the child's current disability, and the specific assistance he needed to overcome this disability.

The result was that the Immigration Judge could not have properly evaluated all the elements of hardship as required by the statue, and the denial of the requested continuance could have potentially changed the outcome of her case. Additionally, the Immigration Judge failed to consider all the hardship factors in the aggregate and on a case-by-case basis, as required. Chan v. INS, 610 F.2d 651 (9th Cir. 1979), Watkins v. INS, 63 F.3d 844 (9th Cir. 1995)

Thus the Immigration Judge violated Petitioner's procedural due process rights and Petitioner was denied her due process right to a full and fair hearing.

Cuadras v. INS, 910 F. 2d 567, 573, (9th Cir. 1990), establishes that an alien is entitled to the Fifth Amendment guaranty of due process, which is satisfied only by a "full and fair hearing."

In assuring that a fair hearing is provided, it is proper for the INS to take notice of certain facts, and give the petitioner an opportunity to respond. Ohio Bell, 301 U.S. at 306; Banks v. Schweiker, 654 F. 2d 637 (9th Cir. 1981). In Banks, the BIA erred because it did not allow the petitioners in that instance an opportunity to rebut the noticed facts. Therefore the fact that they could file a motion to reopen was not considered sufficient by way of their right to rebut.

The Petitioner challenges the constitutionality of the denial of her Petition For Cancellation of Removal, as her right to a fair hearing was compromised by the refusal of the Immigration Judge to grant her an extension to obtain necessary evidence to establish her case.

Petitions for Review such as the one made by the Petitioner to the Ninth Circuit Court of Appeal are presently evaluated under the same standards employed by district courts in evaluating motions for preliminary injunctive relief. Lopez v Heckler, 713 F.2d 1432, 1435, 463 U.S. 1328 (1983). In Lopez it is stated, "The petitioner must show either a probability of success on the merits and the possibility of irreparable injury, or that serious legal hardships are raised and the balance of hardships tips sharply in the petitioner's favor."

The case of Arthurs v. INS, 959 F.2d 142, 143-44 (9th Cir. 1992) further expands the standards for review by stating that, "These standards of review represent the outer extremes of the continuum, with the relative hardships to

the parties providing the critical element in determining at what point on the continuum a stay pending review is justified."

During the evolution of the Immigration and Nationality Act, the case of Artukovoc v. Rison, 784 F.2d 1354, 1355, (9th Cir. 1986), added a further requirement that specified "that the petitioner is required to establish either a probability of success on the merits and the possibility of irreparable injury, or that serious legal questions are raised and the balance of the hardships tips sharply in petitioner's favor."

Therefore based on the above decisions it is entirely proper for the court herein to review the denial of Petitioner's Request For Review with the Ninth Circuit Court, because there is a high probability that she can prevail on the merits of her claim.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeal Erred In Upholding The Immigration Judge's Decision As The Petitioner Was Prejudiced By The Failure of The Immigration Judge To Grant Her A Continuance to Obtain Necessary and Probative Evidence.

It is the Petitioner's contention that the 9th Circuit Court of Appeals further erred in supporting the Immigration Judge's finding that the Petitioner did not establish that the failure of the Immigration Judge to grant her a continuance to obtain evidence denied her the right of a fair hearing, and that her American-citizen child would not suffer extreme and unusual hardship as required

by the Act, if Petitioner were removed from the United States.

It has been well-settled that, "Many factors must be taken into consideration in making a determination of hardship. All factual data and relevant facts presented must be completely analyzed. Failure to consider any of the facts presented constitutes an abuse of discretion" "In making its determination, the court should look at: "age of the subjects, family ties in the U.S. and abroad; length of residency in the U.S. conditions of health, conditions in the country to which the alien is returnable, economic, political, and financial status, business and occupation, the possibility of other means of adjustment, whether of special assistance to the U.S. or the community, and immigration history. "In making this determination, relevant factors though not determinative in themselves, must be considered in the aggregate in determining whether extreme hardship exists." Salamenda v. INS, 70 F. 3d 447 (7th Cir. 1995).

Herein the Petitioner was precluded from presenting evidence in her favor regarding the hardship her American citizen child would suffer based on his present condition requiring special assistance in his school.. Had the Petitioner been able to present this evidence, the outcome of the judicial decision may have been different.

The Petitioner contends that she was unfairly denied consideration of her claim for extreme and unusual hardship on behalf of her minor American citizen child, in that the Immigration Judge did not have an opportunity to review the final school reports demonstrating special needs of her child. Petitioner further contends that her

child's special needs learning disability should have qualified as extreme and exceptional, in that the child needed to remain in the United States to continue receiving special assistance, and that circumstances would require that the Petitioner take the child to Mexico with him, if she were removed.

In the Matter of Recinas, 23 I&N Dec. 467 (BIA 2002), The Board concluded that the Respondent in that case did establish "exceptional and unusual hardship. Herein the Respondent was a 39-year-old single mother of four U.S. citizen children. ages 12, 11, 18, and 5, and two minor respondents, ages 15, and 16. The Respondent in that instance had no close relatives in Mexico and her entire family lived in the United States. The Respondent was the sole support of her family and was self-employed. Additionally her children had spent their entire lives in the U.S. and did not speak Spanish.

The most significant factor about Recinas, is the fact that the Board stated that the "hardship standard was not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief." The Board after engaging in a "cumulative analysis," found that the Lawful Permanent Resident parents of the Petitioner formed a "strong system of family support" which the children would lose if they were removed to Mexico.

The case of Jara-Navarette v. INS, 813 F.2d 1340, (9th Cir. 1986), strongly emphasized the point that the Court must examine every conceivable circumstance that may cause the United States citizen child of a respondent to suffer hardship due to his or her deportation. The Court stated, "In reviewing BIA decisions involving hardship to

the United States citizen children, generalizing rather than individualized consideration and cursory treatment of individual circumstances constitute an abuse of discretion. Thus we have not hesitated to vacate denials of applications for suspension of deportation when the BIA abuses its discretion in examining hardship to United States citizen children." The failure of the Court to review and consider this evidence established that it did not act on evidence that was reasonable, substantial and probative.

Additionally courts in other than the Ninth Circuit have been vigilant in ensuring that the BIA gives individualized consideration to United States citizen children. In Ramos v. INS, 695 F.2d 181 (5th Cir. 1983), the petitioners had two United States children, ages seven, and nine, at the time of the deportation hearing. The Court held that the BIA had not sufficiently examined how a child of a grammar school age might suffer from being uprooted from his life in the United States and remanded the case for further consideration.

In this instance the 9th Circuit Court further erred by supporting the Immigration Judge's decision that removal of the Petitioner would not cause hardship to his son, without having allowed the Petitioner an opportunity for a single continuance in which to obtain record evidence from her child's school to document his special needs.

An abuse of discretion on the part of a reviewing Court must create a situation in which the abuse negatively and distinctly impacts the outcome of the case. Rejection of all evidence presented, without carefully analyzing all of it terminates an alien's ability to obtain a favorable outcome. If the Court without thoughtful review of the Board's decision allows the dismissal of all

evidence presented, any apply alien can fail to meet the requisite standard for hardship. While the Court is vested with authority and discretion, it must be exercised wisely and in a manner that assures that aliens who are before it are able to receive a full and fair review of their cases. This is becoming more important since fewer and fewer forms of judicial review are available under the present immigration laws.

When strong evidence is presented and yet disregarded, this goes directly to the merits of the case and is clearly an incorrect decision. When there is no justification for rejection of evidence, an abuse of discretion is likely present.

Herein the conduct of the reviewing Court in failing to recognize that the Petitioner was prejudiced due to the Immigration Judge's wrongful denial of a continuance, with which to obtain evidence, denotes the rise of a colorable constitutional claim. The Court found in Chavez-Murillo v. INS,1999 WL 728521 (9th Cir. 1999) that the Congressional intent to preclude judicial review of constitutional claims must be clearly evidenced. When a parent is denied cancellation of removal, the government effectively deports the United States born children of that parent as well. This unconscionable result violates due process by forcing children to suffer de facto expulsion from the country of their birth or forego their constitutionally-protected right to remain in this country with their family intact. "The integrity of the family unit has found protection in the Due Process Clause of the 14th Amendment. Stanley v. Illinois, 405 U.S. 645, 651 (1972)

CONCLUSION

Petitioner, herein, contends that the Ninth Circuit Court of Appeals erred in denying her Petition for Review of the denial of Cancellation of Removal by the Immigration Judge. Based upon the aforementioned, Petitioner respectfully requests that this Honorable Court grant the Writ of Certiorari, and permit her case to be reopened and remanded so that she can present all current, relevant, and probative evidence for consideration, and evaluation of her application for relief from removal before the Immigration Court.

Dated: March 18, 2008

Respectfully Submitted,

Maria Teresa Granados Olvera

Maria Teresa Granados Olvera
In Pro Per

Dec 28 2007
CATHY A. CATTERSON,
CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIA TERESA GRANADOS OLVERA Petitioner, v. MICHAEL B. MUKASEY, Attorney General, Respondent.	No. 06-71597 INS Nos. A95-306-370 **MEMORANDUM**

On Petition for Review of an Order of the Board of Immigration Appeals

Submitted December 20, 2007

Before: GOODWIN, WALLACE, and HAWKINS, Circuit Judges.

Maria Teresa Granados, a native and citizen of Mexico, seeks review of the Board of Immigration Appeals, ("BIA") order upholding an immigration judge's order denying her application for cancellation of removal.

* This disposition is not appropriate for publication, and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2)

Jurisdiction is conferred by 8 U.S. C. Section 1252. We review due process claims de novo. *See Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We deny the petition for review.

Granados Olvera contends that the Immigration Judge violated her due process rights by denying her motion for continuance. Contrary to Granados Olvera's contention, the proceedings were not so fundamentally unfair that she was prevented from reasonably presenting her case. See *Colemenar v.* INS,210 F.3d 967, 971 (9th Cir. 2000). Moreover, Granados Olvera failed to show that evidence of her son's after school program attendance would have affected the outcome of athe proceedings. *See id.*(requiring prejudice to prevail on a due process challenge.

PETITION FOR REVIEW DENIED

APPENDIX A

U.S. Department of Justice Decision of the Board of Immigration Appeals
Executive Office of Immigration Review

Falls Church, Virginia 22041

Date: FEB 27, 2006

File: A95 306 370 Los Angeles

In re: MARIA TERESA GRANADOS OLVERA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Javier G. Pineda, Esquire

ORDER:

PER CURIAM. We adopt and affirm the decision of the Immigration Judge dated December 16, 2004. *See Matter of Burbano,* 20 I&N Dec. 872, 874, (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those of the Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision"). The respondent failed to establish exceptional and extremely unusual hardship to her United States citizen child. See section 240A(b)(1)(D) of the Immigration and Nationality Act, 8 U.S.C. Section 1229b(b)(1)(D).

We find no merit to the respondent's argument on appeal that the Immigration Judge abused his discretion in denying her request for a continuance. A party seeking a continuance has the burden to establish good cause for a continuance. A party seeking a continuance has the burden to establish good cause for a continuance. See 8 C.F.R. section 1003.29. The decision to grant or deny continuances was within the sound discretion of the Immigration Judge. *Matter of Sibrung,* 181 I&N Dec. 354 (BIA 1983).

APPENDIX B

Here the respondent requested a continuance not prior to the hearing or at the commencement of the merits hearing, but at the close of the hearing. (Tr at 21). Although the respondent states that she was unable to
obtain school records because school was in recess, she has not shown that she made any effort to contact the school administrative office, which might have been open despite classes not being in session. Nor has she explained why she waited until the day, and indeed the end of the hearing, to request a continuance. Consequently, we find that she failed to establish good cause for a continuance, and therefore the Immigration Judge did not abuse his discretion in denying the continuance.

Moreover, the respondent has not now proffered what she was purportedly prevented from submitting at her hearing, or shown that it would have changed the outcome of the hearing. Consequently, the respondent has failed to establish prejudice. *See Ramirez-Alejandre v. Ashcroft.* 320 F.3d 858, 875 (9th Cir. 2003) (en banc) ("As a predicate to obtaining relief for a violation of procedural due process rights in immigration proceedings, an alien must show that the violation prejudiced him."). Accordingly, the appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge, and the statute, the respondent is permitted to voluntarily depart from the United States, without expense to the government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security (DHS). See section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. Section 1240.26(c), (f). In the event the respondent fails to so depart, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If the respondent fails to depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty of not less than a $1000, and nor more than $5000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. See section 240B(d) of the Act.

"s/_____"

FOR THE BOARD

APPENDIX B

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT LOS ANGELES, CALIFORNIA

File No: A 95 306 370 Date of Decision

IN REMOVAL PROCEEDINGS

In the Matter of
MARIA TERESA GRANADOS OLIVERA

Respondent

CHARGE: Section 212(a)(6)(A) of the Immigration and Nationality Act.

APPLICATION: Cancellation of Removal

ON BEHALF OF RESPONDENT:	ON BEHALF OF SERVICE:
Jerry Pappas Esquire 523 W. 6th Street Ste. 737 Los Angeles California	Ana Partida Esq.

APPENDIX C

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE REMOVABILITY/FORMS OF DISCRETIONARY RELIEF

The respondent was properly served with the NTA at Exhibit 1. She admitted all allegations. Conceded removability, designating Mexico, in the event removal becomes necessary. On the basis of the respondent's admissions, I find that removability has been established by clear, convincing, and unequivocal evidence. Furthermore since the respondent conceded removability, and it is not an issue in this case.

It should be noted that the only reason, in this Court's opinion, that this respondent was brought into removal proceedings is because she went to a notary in Los Angeles area. This notary filed for asylum, withholding, and Convention Against Torture relief who forwarded it to the Department of Homeland Security. The respondent, in all likelihood, thought she was getting a work permit and was mislead by the notary. Not withstanding that type of conduct, the respondent's case was rejected by Homeland Security and forwarded to this Court where adjudication must be completed. The respondent through counsel, in open court withdrew her claims to her asylum, withholding, and Convention Against Torture, a collective Exhibit 2. She did file for cancellation of removal and submitted an application with the appropriate fee and documents, a collective Exhibit 3, 4, and 5. The respondent also testified that (indiscernible)

STATUTORY REQUIREMENTS FOR CANCELLATION OF REMOVAL FOR NON-PERMANENT RESIDENT ALIENS

Number One:
Continuous physical presence.

The respondent has established through testimony and joint documents continuous physical presence for the statutory period of time.

Number Two:
Good Moral Character.

The respondent has no criminal record and is a person of good moral character.

Number Three:
Exceptional and Extremely Unusual Hardship

The Board of Immigration Appeals has published three recent cases on the issue of hardship. In Re Francisco Monreal 23 I&N Dec. 56 (BIA 2001). The Board stated that the respondent must demonstrate that the qualifying relative would suffer hardship that is substantially beyond what would ordinarily be expected to result from the alien's removal; but, the respondent need not establish that the hardship is unconscionable.

Furthermore, in that same decision at page 62, Congress clearly stated that cancellation of removal under 240A (b) (1) of the "Act" is limited to "truly exceptional" situations, HR conference report, 104-828.

And in a more recent case In Re Martha Andazola, 23 I&N Dec. 319 (BIA 2002) the Board of Immigration Appeals denied cancellation of removal to a single mother who had a six and 11 year old U.S. citizen children. There were also facts indicating there were no relatives in Mexico. Notwithstanding the ages of those children, the Board could not find the requisite hardship/

And in a more recent case, Matter of Recinas, 23 I&N Dec. 467 (BIA 2002), the Board did find the requisite hardship where there was a single parent, she had

six children to support, four of which were U.S. citizens, ages 12, 11, 8, and 5. They were also significant factors, including lack of family in Mexico. And that the Spanish language was spoken poorly, read and written by the oldest children.

Other relevant cases include Matter of Anderson, 23 I&N DEC. 596 (BIA 1978). In Anderson, supra, the Board set our the following general factors to guide the Court's analysis. They include: age and length of residency in the United States; family ties in the United States and abroad; health; and economic and political conditions in a country a respondent may be returned.

Other cases include Matter of I-G, 20 I&N DEC. 880 (BIA 1994), and Ramirez-Durazo v. INS, 795 F.2d 491 (9th Cir. 1966) continued off of irrelevant guidance. In the former, the elements required to establish necessary hardship are dependent on the facts and circumstances peculiar to each case. In the later case, relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether the necessary hardship exists.

Even though children may face difficulty adjusting to life in their parents homeland, these problems don't entirely differ from those encountered by other children who relocate with their children especially at a young age. Marquez-Medina v. INS, 765 F.2d 673 (7th Cir. 1985). The fact that economic and educational opportunity for children are better in the United States than in the alien's homeland, it does not establish extreme hardship. See Matter of Kim, 15 I&N Dec. 88 (BIA 1974). Equally these results do not alone establish exceptional and extremely unusual hardship for cancellation of removal purposes.

APPENDIX C

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Turning to the facts of this case, the respondent is single and has one U.S. citizen child, age nine. The respondent has testified that she is healthy and that the child is healthy and that if her application is not approved, that they would return to Hildalgo where the respondent hails from in Mexico.

The respondent also testified that her mother is in the United States in an undocumented fashion. She is neither a U.S. citizen or a lawful permanent resident. The respondent also told me that the father of the child is undocumented and is from Mexico as well. She does not know where his parents are in Mexico. The respondent also has testified that she has no siblings in Hidalgo and has two half-siblings in the United States, also without documents.

The gravamen of the respondent's claim is that this fourth grader will be required to grow up in Mexico until basically he can sponsor the respondent to come back to the United States when he is 21 years of age. This will put him at a significant disadvantage according to the respondent's testimony because she wanted him educated to have an advancement in his life. The Court certainly believes that it will be a hardship on this little boy to grow up in Mexico, basically with only his mother. However, the standard that is required by Congress is that hardship must be exceptional and extremely unusual. The respondent said that her son will miss the grandmother but the grandmother is undocumented. It is very possible that when the respondent goes back to Mexico, that the mother/grandmother sees the benefit of being with this child because she is close to him, and may return to Hidalgo with the family. It is not guaranteed, but there is no evidence to indicate that the mother must stay in the United States because there is no evidence of her illnesses. Furthermore, the father to the child may go back to

Hidalgo which would help support them if he was in Mexico. However, since he is voluntarily supporting the child in the United States, and he is not under proceedings it is just as likely that he will stay in the United States, unmolested, and will be able to send money to this family, continuing as he has been in the past, voluntarily. There is no evidence to the contrary in this Court's opinion or in the record of the proceedings.

The Court is certainly mindful that the respondent is having reading difficulties and although the Court did not grant a continuance for that particular piece of evidence, the Court does have page 112 of collective Exhibit 5. At the top of that page, the teacher writes, "please encourage Jose to read at least 30 minutes each night from a book of choice." Then the report then goes on to state "his oral reading and comprehension are satisfactory." The report goes on to say academically "Jose has done very well, and has a good foundation for next year." This Court is fully satisfied that the respondent's reading difficulties can be attended to by the respondent in Mexico. It must be remembered that she came to the United States when she was almost 28 years old, and she was educated in the United States for several years of her early residency. She has confirmed that she is bilingual. I believe that she will be able to assist her son in the translation with her skills in English and in Spanish.

It should also be noted that this respondent is quite accomplished. She had to work in Mexico before coming to the United States because she came later in life. She has accomplished being shift manager of Del Taco with only 10 years of physical presence in the United States. This certainly shows her ability to earn a living and I believe that her skills that are bilingual and shift manager in a restaurant are going to be transferable to Mexico. I also believe that her age is not so advanced that it will be a significant disadvantage to her.

I am also factoring in the fact that her son will also miss his friends. There are no cousins in the United States. In the final analysis I do not believe that a collective approach to looking at all the factors allows me to find that it would be an exceptional and extremely unusual hardship on this individual if he had to grow up in Mexico in Hildalgo. Therefore, I must deny the application on this issue.

Suffice to say, if I could have fond the requisite hardship, I would have granted this case in the exercise of discretion. The respondent is functioning extremely well in the United States and is doing everything she can to raise her son in a proper manner. She should be commended for her efforts.

MOTION TO CONTINUE

The court denied the motion to continue on merits date. The respondent was given more than adequate time to prepare for this hearing. Since the boys was put into a special class for reading after school six months ago. The respondent has had more than enough time to get those documents to the Court. The Court did not believe that the outcome of this case could be changed with or without those documents since her testimony was given full weight and credit.

VOLUNTARY DEPARTURE

The respondent is certainly eligible statutorily for this relief and is entitled to it as a matter of discretion.

ORDERS

IT IS HEREBY ORDERED respondents motion for continuance on the day of the merits hearing being denied;

FURTHER ORDERED respondent's application for cancellation of removal be denied;

FURTHER ORDERED respondent be granted the privilege of departing this country voluntarily without expense to the government on or before February 14, 2005, if the respondent, within five days of this order, December 23, 2004, places a $500 bond with the Department of Homeland Security;

FURTHER ORDERED RESPONDENT DOES NOT POST A BOND OF $500 ON OR BEFORE December 23, 2004; does not depart the United States when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceeding and the respondent shall be removed from the United states to Mexico on the charges contained in the Notice To Appear.

" "

IRA BANK
Immigration Judge

APPENDIX C

APPENDIX C

§ 212(a)(6)(A)(1)

INA

(6) Illegal Entrants and Immigration Violators

(A) Aliens Present Without Permission or Parole

(i) In General

An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

INA
Section 240
(e) Definition
In this section and section 240 A:
(1) Exceptional Circumstances

The term "exceptional circumstances" refers to exceptional circumstances, (such as illness of the alien or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien.

APPENDIX E

U.S. Constitution: Fourteenth Amendment

Amendment Text
Annotations

Section. 1. all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens in the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; not deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX F

8 C.F.R. Section 1003.29

Continuances

A respondent may be entitled to a continuance for good cause, and for a reasonable time.

APPENDIX G